

REMARKS/ARGUMENTS

This Amendment is filed in response to the Office Action mailed April 10, 2003. In that Office Action, claims 1-4 were withdrawn. Claims 5, 8-9, 14-15, 18 and 20-25 were rejected under 35 U.S.C. Section 102 as anticipated by U.S. Patent 2,252,417 to Sewall. Claim 6 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent 2,252,417 to Sewall. Claims 7, 10-13, 16, 17, 18 and 26 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent 2,252,417 to Sewall in view of U.S. Patent 4,633,598 to Moronaga, et al. Applicants respectfully traverse these rejections for the reasons set out hereinafter.

Claims 5, 8, 14, 20 and 22 have been amended herein to recite the feature that the insole has a single uniform thickness layer with variation in flexibility, with the single layer forming the bottom of the insole. The Sewall patent does not disclose such structure and therefore can't form the basis for a proper rejection under section 102. In each embodiment in Sewall, the patent requires two layers of non-homogeneous material. For example, in the embodiment of Figures 1 and 2, the patent requires a first layer formed of a sheet 5 of flexible material and sheet 9 of relatively stiff material, and a second layer formed of sheet 7 of flexible material and sheet 11 of relatively stiff material. In the Office Action, the Examiner identified a base strip 55, 53, 71 with first portion 55 at the rear foot region, a second portion 53 at the forefoot region and a toe piece 71 at the toe region. However, reference to the Sewall patent at page 4, column 1, lines 6-56 shows that sheet 55 is the toe portion and strip 71 identifies the entire assembly of sheets 53, 55 etc. It must also be understood that certain of the embodiments of Sewall, such as those in Figures 12, 18 and 19 are actually constructions to make two rows of insoles.

The present invention, as claimed, has a single uniform thickness layer with variation in flexibility. For example, claim 5 recites a base strip with a first portion and a second portion, with the second portion more flexible than the first portion, and a toe piece which combine to form a single uniform thickness layer. Other layers that can be used with the layer combining the base strip and toe piece are homogeneous layers, such as the surface portion 61 and the intermediate portion 62. Thus, the amended claims, and the claims dependent thereon, are believed patentable over the prior art of record.

The rejection of claim 6 as obvious over Sewall is also respectfully traversed. Claim 6 depends from claim 5, and is believed patentable for the reasons set forth above. Again, Sewall does not disclose a single uniform thickness layer with variation in flexibility.

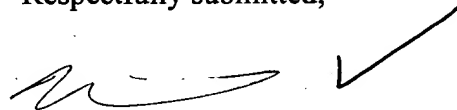
The rejection of claims 7, 10-13, 16, 17, 18 and 26 as obvious over Sewall and Moronaga, et al is also respectfully traversed. Again, these claims depend from claims that have been amended to recite the use of a single uniform thickness layer with variation in flexibility, and are believed patentable for the reasons set forth above. In addition, Moronaga et al does not disclose a third portion positioned in contact with the first portion to form a single uniform

thickness layer. Figure 2 of Moronaga et al clearly shows the layer 4 causes an upward bend in the lower layer 3, and layers 3 and 4 do not combine to form a single uniform thickness layer. Thus, these claims are believed patentable over the cited references.

In addition, new claims 27-30 have been added to recite additional features of the invention. It is believed these claims are patentable over the cited references as well.

Applicants respectfully request that a timely Notice of Allowance be issued in this application. A petition for two month extension of time to respond to the Office Action is filed herewith. No additional fees are believed necessary for the proper filing of this Amendment. However, if any fees are necessary, including and extension fees under Rule 136, please withdraw such fees as are necessary from Deposit Account 50-1274(10368/25901).

Respectfully submitted,



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